HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.265 of 2001

APPELLANTS: Triveni & others

- Versus -

RESPONDENT: State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
17-4-2007

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
DHIRENDRA MISHRA
Judge
17 -4-2007

POST FOR PRONOUNCEMENT OF JUDGMENT ON 19th APRIL, 2007

Sd/-
L.C.BHADOO
Judge
17 -4-2007

(50)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.265 of 2001

CORAM: - HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

APPELLANTS:
(In Jail)

1. Triveni, S/o Babaram, aged 32 years.
2. Balam, S/o Heelko Uron, age 25 years.
3. Harisai, S/o Dilbhajan, aged 22 years.
4. Sooraj Prasad, S/o Chatakoo R. Ram, Aged 23 years.
5. Udeshram, S/o Jodhan Uraon, Aged 19 years.
6. Ratan, S/o Jeetu, Aged 30 years.
7. Nan alias Dhaneshwar, S/o Babaram Vishwakarma, Aged 23 years.
8. Tejan Ram, S/o Sonsai, Aged 22 years.
9. Bandhu, S/o Nansai Kanwar, Aged 36 years.

All residents of Village: Hansdand, PS: Lakhanpur, Distt. Surguja.

- Versus -

RESPONDENT: State of Chhattisgarh

(Appeal under Section 374 of the Code of Criminal Procedure)

(51)

Present:

Shri Subhash Yadav, counsel for the appellants No.1, 7 and 8.

Shri Abhay Tiwari, counsel for the appellants No.2 to 6 and 9.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Shri Prafulla Bharat, counsel for the objector.

JUDGMENT

(Delivered on 18th April, 2007)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.* -

1) The accused/appellants have preferred this appeal questioning legality and correctness of the judgment of conviction and order of sentence dated 22-2-2001 passed by the 1st Additional Sessions Judge, Ambikapur in S.T. No.331/99 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Sections 147, 148 and 302 read with Section 149 of the I.P.C., sentenced each of the accused to undergo R.I. for two years & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months, to undergo R.I. for 3 years & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months and to undergo imprisonment for life & to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 1 year respectively.

2) The case of the prosecution, in brief, is that on 10-9-99 Kamal Kumar Pandey (PW-1) was transporting cement from Raipur in truck bearing registration No. M.P.-27-B/1015. When the truck reached near the turn of village Hansdand, rear tyre of the truck was deflated, therefore, he took the tyre for repair to Lakhanpur. He returned at about 7 p.m. at the turn after getting the tyre repaired, at that time, Tarachand Gupta known to him came there and requested him that some wood is kept at his residence that is to be carried to Ambikapur. Thereafter, he brought 5 pieces of wood and after loading the same in truck, left the place. In the meantime, accused Triveni Yadav

(52)

and Balam along with 8-10 associates of village Hansdand came near his truck, they dropped the wood from the truck and said that they would not allow the wood to be carried. Kamal Kumar left the place to inform Tarachand Gupta about the said incident, Tarachand Gupta met him along with two persons on the way on a motorcycle. He apprised him about the incident. Tarachand Gupta came to the truck along with his 2 associates. Triveni, Balam and their 8-10 associates started attacking Tarachand Gupta on his head and face with Lathi and club. Seeing this, Kamal Kumar Pandey went to Lakhanpur on another truck to lodge the report in the Police Station. After lodging the report Ex-D/1 he returned to his truck. He saw that Tarachand Gupta was already dead.

3) Bechu Singh, Assistant Sub Inspector, receiving the report, left for scene of occurrence and saw that Tarachand Gupta was already dead. Dehati Nalishi Ex.-P/2 and without number information report Ex.-P/4 were given by Kamal Kumar. Based on that merg intimation Ex.-P/3 was written. Those documents were sent to the Police Station Lakhanpur. Based on that Ashok Kujur (PW-10), Station House Officer, registered FIR Ex.-P/1 at 11.15 p.m. He took up the investigation. Ashok Kujur after giving notice to the Panchas, prepared inquest Ex.-P/7 on the body of Tarachand Gupta. The body of Tarachand Gupta was sent for postmortem examination to the Primary Health Centre, Lakhanpur under Ex.-P/5-A where Dr. M.H. Parmar conducted postmortem on the body of Tarachand Gupta, prepared postmortem report Ex.-P/5. He opined that cause of death of Tarachand Gupta was haemorrhage and shock. Death was homicidal in nature. During the investigation, the Investigating Officer prepared site plan Ex.-P/5. Accused Bandhu gave memorandum Ex.-P/6 about axe, in pursuance of that, at the instance of accused Bandhu, axe was seized under Ex.-P/7. The woods of Tarachand Gupta which were dropped from the truck were seized under Ex.-P/8. Plain soil and blood stained soil was seized under Ex.-P/9. Accused Triveni gave memorandum Ex.-P/8 regarding Lathi, in pursuance of that at his instance Lathi was seized under Ex.-P/9. Accused Balam gave memorandum Ex.-P/10, in pursuance of

(53)

that, at his instance axe was seized under Ex.-P/11. Accused Harisai gave memorandum Ex.-P/12, in pursuance of that, Lathi was seized under Ex.-P/13. Accused Suraj gave memorandum Ex.-P/14, in pursuance of that, Lathi was seized under Ex.-P/15. Accused Udeshram gave memorandum Ex.-P/16, in pursuance of that, Lathi was seized under Ex.-P/17. Accused Ratan gave memorandum Ex.-P/18, in pursuance of that Lathi was seized under Ex.-P/19. Accused Nan @ Dhaneshwar gave memorandum Ex.-P/20, in pursuance of that, Lathi was seized under Ex.-P/21. Accused Tejanram gave memorandum Ex.-P/22, in pursuance of that, Lathi was seized under Ex.-P/23. Clothes of the deceased were seized under Ex.-P/31. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Sagar from where report Ex.-P/35 was received.

4) After completion of investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate, 1st Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur from where learned 1st Additional Sessions Judge received the case on transfer.

5) The prosecution examined 10 witnesses at the trial in order to establish charge against the accused persons. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime.

6) Learned Additional Sessions Judge after hearing counsel for the respective parties, perusal of the record, convicted and sentenced each of the accused as aforementioned.

7) We have heard learned counsel for the parties.

8) Shri Abhay Tiwari and Shri Subhash Yadav, learned counsel for the accused/appellants, have not disputed homicidal death of deceased Tarachand Gupta. Moreover, eyewitness namely, Kamal Kumar Pandey (PW-1) - driver has stated that accused Triveni, Balam and their associates attacked

(54)

the deceased with Lathi and axe, as a result of which he succumbed to the injuries on the spot. The above evidence is corroborated by the medical evidence of Dr. M.H. Parmar (PW-5). He has stated that he conducted postmortem on the body of Tarachand Gupta on 11-9-99. There were 6 incised wounds, 1 lacerated wound and 9 bruises. Right side and left side jaw bone was fractured. Maxilla bone was fractured. The injuries were ante mortem in nature. The injuries were sufficient in the ordinary course of nature to cause death. Cause of death was due to excessive bleeding on account of the injuries and shock. Death was homicidal in nature. Therefore, in view of the above evidence, it is established that death of deceased Tarachand Gupta was homicidal in nature.

9) As far as involvement of accused/appellants namely, Triveni, Balam, Harisai, Suraj Prasad, Udeshram, Ratan, Nan @ Dhaneshwar, Tejan Ram and Bandhu in the crime in question i.e. committing murder of Tarachand Gupta is concerned, conviction of these appellants rests on the testimony of Kamal Kumar Pandey (PW-1), Tejram (PW-2), Panno Prasad Singh (PW-3) and Charitra Singh (PW-4) who have claimed themselves to be eyewitnesses to the incident.

10) Shri Abhay Tiwari, learned counsel, argued that the accused persons have been falsely implicated in the crime on account of animosity between the parties. He further argued that except the names of Triveni and Balam the names of other accused persons have not been mentioned in the FIR. So-called witness Tejram is enemy of the accused persons, his presence at 8 p.m. in the night at the place of occurrence that too at a distance of one furlong from his house was doubtful. As far as eyewitnesses Panno and Charitra are concerned, they are residents of village Latori and Amera, which are at a distance of 10 km and 14 km from the place of occurrence, therefore, in the night-time, their presence on the scene of occurrence is doubtful. PW-1 Kamal Kumar Pandey has stated that he went to inform Tarachand Gupta whereas, these witnesses have stated that nobody came to inform Tarachand Gupta. They themselves reached on the spot. He also argued that in the

(55)

first information report and merg intimation, it has been mentioned that the accused persons attacked with lathi and club. But the doctor opined that incised injuries were caused by sharp edged weapon, only thereafter the witnesses had stated that the accused persons attacked the deceased with axe also. He also argued that in view of the above infirmities the prosecution has utterly failed to establish the case against the accused persons. The argument of Shri Abhay Tiwari, Advocate, was adopted by Shri Subhash Yadav, Advocate.

11) On the other hand, learned Panel Lawyer supported the judgment of the trial Court.

12) Kamal Kumar Pandey (PW-1) has stated that on the fateful day he was transporting cement from Raipur in his truck bearing registration No.M.P.-27-B/1015. When at about 2-3 p.m. his truck reached near the turn of village Hansdand the rear tyre of the truck was deflated, therefore, he took that tyre to Lakhanpur for getting the same repaired. After getting the same repaired, he returned at about 7 p.m.. When he was busy in fixing the tyre, Tarachand Gupta (since deceased) came near to him and requested him to carry pieces of wood to Ambikapur. Thereafter, Tarachand Gupta brought 5 pieces of wood from his house, loaded in the truck and left the place. Thereafter, accused Triveni and Balam along with 7-8 persons came on the scene and said that they would not allow him to transport the said wood to Ambikapur. He requested them but they did not accede his request. He left the place to inform Tarachand Gupta. In the meantime, Tarachand Gupta along with 2 associates met him on the way on motor cycle at about 8 p.m.. He apprised him. He came on the spot. Seeing Tarachand Gupta, the accused persons attacked Tarachand Gupta with Lathis and clubs. He fell down and sustained multiple injuries on his head and face. Therefore, he left for police station Lakhanpur on another truck and lodged the report in Police Station Lakhanpur, which was entered in the Rojnamcha Sana at S. No.349 at 9 p.m.

(56)

13)Receiving the information, A.S.I. Bechu Singh came on the scene where after verification Dehati Merg Intimation Ex.-P/2 at 9.30 p.m., first information report without number (Ex.-P/4) was given at 9.40 p.m., based on that, merg intimation Ex.-P/3 was given at 11 p.m., same were sent to police station Lakhanpur along with R... Sethi Prasad, constable, based on that First Information Report Ex.-P/1 was registered at 11.15 p.m. In all these documents on the basis of information given by Kamal Kumar Pandey, the names of Triveni and Balam were mentioned along with other 8-10 persons as assailants.

14)PW-2 Tejram, who is the resident of village Hansdand and claimed to be eyewitness to the incident, has stated that he witnessed the crime from certain distance while standing on a sand dune. He has stated that truck was standing on the road. Deceased Tarachand Gupta along with Panno and Charitra Singh reached on the spot on a motorcycle, whereas, he went running to the spot via shortcut route, from that spot he witnessed the incident. He has further stated that Tarachand Gupta reached first, thereafter he reached, Balam, Triveni, Ratan, Hari, Suraj, Bandhu, Udesh, all 9 persons, attacked Tara Guruji with Lathi and axe. Tarachand Gupta sustained axe and club blow on his head and face as also on the chest, as a result of which Tarachand Gupta fell down on the road. The accused persons fled from the scene of occurrence. The truck owner went to lodge report in the police station. Thereafter, he also left for his residence. He informed his brother Pooran and father Sitaram about the incident but he did not disclose the names of the assailants. When he was disclosing the fact to his brother, at that time police people reached to him, thereafter, he went on the spot along with police. Site plan (Ex.-P/5) was prepared in his presence. In cross-examination, he has admitted that there was dispute with the accused persons regarding installation of hand pump. He and Tarachand Gupta (since deceased) wanted the hand pump to be installed near their house. The accused party objected that, thereafter hand pump was installed on the corner of road near mango tree. He has further admitted that

(57)

deceased Tarachand was on his side and there was dispute between them & the accused persons. Even criminal cases were instituted against each other under Sections 151 and 107 of the Cr.P.C.. They appeared in the Court. He has further stated that on the last Holi Triveni quarreled with him, his father and brother. The matter was reported in the police station. For that incident, a criminal case is pending against him and his family members. He has also stated that his house from the place of occurrence is at a distance of one furlong. As this witness being on inimical relations with the accused party as also the deceased was in his group, therefore, his testimony has to be scrutinized with greater care and circumspection. After perusal of his whole evidence, we are of the considered opinion that the prosecution has not been able to establish his presence at the scene of occurrence beyond reasonable doubt for the following reasons:-

> "In his examination, he has stated that Tarachand deceased along with two persons reached on the spot on a motorcycle ahead of him whereas, he came running through shortcut route and was standing on the sand dune. Why he came running from his house to the sand dune all the way for about one furlong that too at about 8 p.m. in the night has not been disclosed by this witness. His conduct is also doubtful for the reason that he has stated that he was witnessing the crime while standing on the sand dune. When Tarachand Gupta was a person of his party, why he did not intervene, is a circumstance, which makes his presence doubtful. Moreover, he has stated that when the accused persons left after attacking deceased Tarachand Gupta, he also left for his house, which is also unnatural. Thereafter, he has stated that he came to his house and disclosed to his father and brother, but he did not disclose the names of the assailants to them. His house is adjacent to the house of deceased Tarachand Gupta but he preferred not to inform family members of Tarachand Gupta on the ground that

(58)

they were ill, which is also not a plausible explanation. The merg intimation was prepared in the presence of Bechu Singh, A.S.I., after verification from the spot at about 9 p.m., at that time this witness Tejram was also present on the spot, on the basis of merg intimation, F.I.R. Ex.-P/1 was registered at 11.15 p.m., therefore, why the names of the accused persons except Triveni and Balam have not been mentioned in all these documents is not explained by the prosecution. Tejram is the person who is resident of village Hansdand, he has stated to witness whole crime from the sand dune. He was knowing all the accused persons, but why their names have not been mentioned either in the merg intimation or FIR. It is true that merg intimation and FIR were given by PW-1 Kamal Kumar but he could have mentioned in these documents that Tejram PW-2 also witnessed the crime and he has disclosed the names of assailants, therefore, above facts show that this witness was not present on the scene of occurrence. Apart from that, in the Court evidence, he has stated that accused Balam, Triveni, Ratan, Hari, Suraj, Bandhu, Udesh, all 9 persons, had attacked, but he has not mentioned the names of accused Suraj Prasad and Nan @ Dhaneshwar. He has further stated that he did not see as to whether Panno and Charitra Guruji went to help Tarachand Gupta after the accused persons left scene of occurrence. He has further stated that he did not try to talk to them. When these two persons were with deceased Tarachand Gupta, he was also from the party of Tarachand Gupta, then why he did not talk to them, is also a circumstance, which creates doubt about his presence. Moreover, site plan Ex.-P/5 was prepared at his instance but in that site plan the Investigating Officer has not shown the place from where this person witnessed the crime in question. Therefore, for the above reasons, in the background that this witness was on

59

inimical relations with the accused persons; moreover, criminal cases were also pending against him on account of dispute with the accused persons, as such, the evidence of this witness does not inspire confidence of the Court. The presence of this witness on the scene of occurrence becomes doubtful."

15) As far as presence of PW-3 Panno Prasad Singh, teacher and PW-4 Charitra Singh, teacher, is concerned, after perusal of their evidence, we are of the considered opinion that their presence is also doubtful on the scene of occurrence. They have stated that from the market of Lakhanpur when they were going on motorcycle, on the way, they decided to go to meet Tarachand Gupta at his residence at Hansdand. They have further stated that after remaining some time with Tarachand Gupta, Tarachand Gupta asked that let us go to Lakhanpur. When these two persons already came from Lakhanpur, they were going to their native place at about 8 p.m. in the night, therefore, where was the necessity on account of which all the 3 persons decided to go to Lakhanpur, that has not been disclosed by these witnesses. It is an admitted position that these witnesses being friend of deceased Tarachand Gupta, being a teacher, they were interested in Tarachand Gupta, therefore, their evidence has also to be scrutinized with greater care and circumspection. It has come in the evidence of Panno that he is the resident of village Latori which is about 10 km from the place of occurrence. Similarly, PW-4 Charitra Singh has stated that he is the resident of village Amera which is at a distance of 14 km from village Hansdand. First of all, how they were together and why they came to village Hansdand from such a long distance that too in the night time at about 8 p.m. is also doubtful. The accused persons were not known to these two witnesses. They were never posted in the village Hansdand. How these two witnesses were knowing the names of accused Triveni and Balam has not been explained by these witnesses. Moreover, these witnesses have stated that when they reached on the spot on a motorcycle, the accused persons attacked Tarachand Gupta. They have stated that the accused persons did not enquire from Tarachand

(60)

Gupta about the wood whereas, PW-1 Kamal Kumar Pandey has stated that when Tarachand Gupta left after loading the wood in his truck, the accused persons appeared on the scene of occurrence and said that they would not allow him to transport the wood to Ambikapur, on which he left the place to inform Tarachand Gupta about the situation. When this witness Kamal Kumar walked few steps, these persons came on a motorcycle. He informed Tarachand Gupta about the objection being raised by the accused persons, whereas, these two witnesses had totally denied this part of the evidence of Kamal Kumar Pandey. PW-3 Panno Prasad Singh has stated that all the persons started attacking with Lathi and axe. He has further stated that handle and headlight of the motorcycle was damaged. No blood was dropped on the motorcycle whereas, PW-4 Charitra Singh has stated that motorcycle was not damaged. Moreover, when the motorcycle was damaged, why motorcycle was not seized by the Investigating Officer in order to establish that all the 3 persons came on a motorcycle, attack was made and motorcycle was damaged, that could have been a corroborative piece of evidence to establish presence of these two witnesses. PW-3 Panno has stated that when attack was made, blood was not splashed or dropped on the body or his clothes whereas, PW-4 Charitra Singh has stated that blood was dropped on Panno and not on his body. They have further stated that they remained standing there, they did not intervene in the matter and they had not persuaded the accused persons not to attack Tarachand Gupta is also an unnatural conduct. None of them went to the police station Lakhanpur to inform, therefore, for the above reasons, we are of the considered opinion that the presence of these two witnesses on the place of occurrence is also doubtful. Hence their testimony cannot be believed.

16) Now, coming to the evidence of PW-1 Kamal Kumar Pandey, he is an independent witness. In cross-examination, the defence has not been able to bring any circumstance on record, which discredit his evidence or makes presence of this witness on the scene of occurrence doubtful. This witness has stated that at about 8 p.m. when Tarachand Gupta reached on the spot,

(61)

accused persons Triveni, Balam and their associates started attacking with lathi and club. He is a person after happening of the incident left to police station Lakhanpur and gave intimation Ex-D/1 at 9 p.m., based on that, A.S.I. Bechu Singh came on the scene of occurrence, after verification, Dehati merg intimation Ex.-P/2, merg intimation Ex.-P/3 and first information report without number Ex.-P/4 were prepared and same were sent, based on that FIR Ex.-P/1 was registered. He has categorically taken the names of accused Triveni and Balam. In cross-examination of this witness, defence has not been able to discredit his evidence. He has categorically stated that Triveni and Balam attacked the deceased. As far as other 7 accused persons are concerned, he has not mentioned the names of those accused persons. Moreover, the Investigating Officer had not requested Executive Magistrate for identification parade in order to establish that other 7 accused persons were also assailants because all the accused persons were not known to this witness. The incident was of the night, therefore, best course for the Investigating Officer was to request Executive Magistrate for identification parade in order to establish identity of all the accused persons. Except the recovery of lathi and axe at the instance of other 7 accused persons there is nothing on record to connect these accused persons with the crime in question. As far as recovery of lathi and axe is concerned, such lathis and axes are normally found in every house of the village side. In F.S.L. report no human blood that too of the blood group of the deceased has been detected, therefore, merely on the basis of recovery of lathi and axe, 7 accused persons namely, Harisai, Suraj Prasad, Udeshram, Ratan, Nan @ Dhaneshwar, Tejan Ram and Bandhu cannot be connected with crime in question. As there were two groups in the village, Tejram and deceased Tarachand Gupta were on inimical relations with the accused persons, therefore, false implication of these 7 accused persons looking to the evidence and circumstances brought on record cannot be ruled out. There is no cogent, clear and legally admissible evidence to establish presence of these 7 accused persons on the place of occurrence, therefore, they are entitled for the benefit of doubt.

(62)

17) As far as case of Triveni and Balam is concerned, evidence of PW-1 Kamal Kumar Pandey regarding their presence on the spot is consistent. Their involvement in the crime in question is established.

18) As regards argument of learned counsel for the appellants that in the first information report and merg intimation, there is no mention about the axe being used as weapon of offence, only after the doctor gave report that there were incised wounds on the body of Tarachand Gupta, axe was introduced. But, we do not find any substance in this argument for the reason that it is admitted position that offence was committed at about 8 p.m. in the night, the accused persons attacked Tarachand Gupta all of a sudden, the witness witnessed the crime from certain distance, therefore, there was every possibility that when the accused persons made assault together this witness might have escaped noticing axe, weapon of offence, being used by the accused persons. On this ground only, his evidence cannot be doubted.

19) There was motive for committing crime for the reason that in the evidence of Tejram it has come on record that Tarachand Gupta was on the side of Tejram whereas, the accused persons were on the other side. Criminal cases were pending between the parties. Moreover, Tarachand Gupta and Tejram wanted hand pump to be installed near their house which was objected by the accused persons. Even PW-6 Gyanchand Gupta, brother of the deceased, has stated that he is the resident of Ambikapur. In between his brother used to come to Ambikapur and disclose to him that he was upset on account of the behaviour of villagers. He has stated that in the year 1998 during the Holi festival the accused persons once went to the house of Tarachand Gupta to attack him carrying axe and lathi in their hands but Tarachand Gupta was able to see from the window, therefore, he did not come out from the house. When Tejram was sitting in the house of Shiva the accused persons went and attacked Tejram. Therefore, the above facts are suggestive that there was long animosity between Tarachand Gupta, Tejram on the one hand and the accused persons on the other hand and Tarachand Gupta was on the side of

63

Tejram. Therefore, there was strong motive to attack the deceased by accused Triveni and Balam.

20) For the foregoing reasons, we are of the considered opinion that as far as involvement of accused persons namely, Harisai, Suraj Prasad, Udeshram, Ratan, Nan @ Dhaneshwar, Tejan Ram and Bandhu in crime in question is concerned, the prosecution has failed to establish involvement of the aforesaid accused persons in the crime in question beyond reasonable doubt. Therefore, their conviction under Sections 147, 148 and 302 read with Section 149 of the I.P.C. cannot be sustained. As far as conviction of accused persons namely, Triveni and Balam is concerned, their conviction under Sections 147 and 148 of the I.P.C. cannot be sustained for the above reasons. The finding of the trial Court regarding attacking the deceased by these two accused persons is based on legal evidence. There is no reason before this Court to disturb that finding.

21) In the result, appeal of accused Harisai, Suraj Prasad, Udeshram, Ratan, Nan @ Dhaneshwar, Tejan Ram and Bandhu succeeds. Their conviction and sentence imposed upon them under Sections 147, 148 and 302 read with Section 149 of the I.P.C. are set aside. It is stated that they are in detention since 1999, therefore, they be set at liberty forthwith, if not required in any other case. Conviction of accused Triveni and Balam for commission of offence under Sections 147 and 148 of the I.P.C. and sentence imposed upon them under those Sections are set aside. They are acquitted of the above charges. However, their conviction & sentence under Section 302 read with Section 149 of the I.P.C. are maintained and their appeal to that extent is dismissed.

Sd/-
L.C.BHADOO
Judge
16-4-2007

Sd/-
DHIRENDRA MISHRA
Judge
16-4-2007

Barve